IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4698 OF 2006

Shri Premsingh Bava ..Petitioner

Vs.

The State of Maharashtara & Ors..Respondents

Mr. V.G. Rege, for the Petitioner

CORAM : F.I. REBELLO &

R.V. MORE,JJ.

DATED : 16TH JANUARY, 2007

P.C.

. The petitioner was earlier in the employment in the office of the Collector of Mumbai as a Senior Clerk. Vacancy for direct recruitment to the post of Sales Tax Officers came to be advertised when the petitioner was selected by the Maharashtra Public Service Commission and was issued letter of appointment dated 18th August, 1972 with effect from 14th August, 1972. The petitioner retired on 30th April, 1996.

2. The petitioner thereafter filed Original Application being O.A. No.766 of 2003 seeking various reliefs. One of the reliefs was for counting of his service from 1957 to 1971 for the purpose of fixing his pension and arrears. The other reliefs sought according to the learned Counsel were considered. The order of the Tribunal is dated 28th December, 2005. The petitioner by the present petition is challenging the order refusing to grant him past service.

The Tribunal considered the provisions of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982. The Tribunal noted that in the absence of any other Rule in force being brought to his attention and as the petitioner was appointed in the year 1982, he took into consideration Rule 46. Rule 46 (2) reads as under:-

> "(2) A resignation shall not entails forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies."

Admittedly the petitioner had not sought the permission in terms of Rule 46(2). Even otherwise the petitioner has approached the Tribunal much after his retirement on 30th April, 1996. The Tribunal on facts found that the petitioner has not taken permission as required under Rule 46(2) and consequently rejected the relief. We are not inclined to interfere in the exercise of our extra ordinary jurisdiction. Hence petition dismissed.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**